



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Phaostron Instrument & Electronic Company

File: B-284456

Date: April 20, 2000

Mary E. Shallman, Esq., Morrison & Foerster, for the protester.
Bette Reinhart for Aircraft Instruments Co., an intervenor.
Stephen Stastny, Esq., Defense Logistics Agency, for the agency.
Scott H. Riback, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that award was improper because contracting activity that approved awardee's part for addition to qualified products list did not have approval authority is denied, where contracting officer found part approval valid based on consideration of information from cognizant activities, consistent with his authority under 10 U.S.C. § 2319.

DECISION

Phaostron Instrument & Electronic Company protests the issuance of a purchase order to Aircraft Instruments Company (AIC) under request for quotations (RFQ) No. SPO440-99-Q-W731, issued by the Defense Supply Center, Richmond (DSCR), Defense Logistics Agency, for a quantity of pressure indicators. Phaostron asserts that AIC's part was not properly included on the qualified products list for this requirement.

We deny the protest.

The pressure indicators are a critical application item and, as indicated in the RFQ, competition for the requirement was limited to firms whose items were approved for the qualified products list (QPL) at the time of contract award. RFQ at 3. At the time the RFQ was issued, only the protester and one other firm were listed on the QPL. QPL-27190-9, Mar. 30, 1998. In response to the solicitation, the agency received several quotations, including the protester's and AIC's.

AIC's quotation was low and, based on an evaluation of all the quotations under the agency's automated best value model technical rating scheme, was determined to offer the best overall value to the government. Because AIC's part was not listed on the most recent iteration of the QPL, however, the contract specialist contacted DSCR's quality assurance specialist to determine whether AIC's part was in fact approved for the manufacture of this item. Contracting Officer's Statement at 3-4. After being contacted by the agency, AIC furnished an August 13, 1996 letter from DSCR stating that, based on test data that had been furnished by AIC, its part would be added to the QPL. *Id.* at 4. The agency also contacted the cognizant personnel at the Defense Supply Center, Columbus (DSCC), since that activity had been indicated on the QPL as the one responsible for maintaining the QPL. *Id.* In response to that query, DSCC advised that the firm's part was in fact qualified, and that it would be added to the QPL. *Id.* Based on this information, DSCR concluded that the AIC part was qualified, and awarded the firm a purchase order on November 9, 1999. Phaostron challenged the award decision in an agency-level protest, which was denied. Phaostron then filed this protest in our Office.

Phaostron asserts that the award was improper because AIC's part has not properly been approved for inclusion on the QPL.¹ The sole basis for Phaostron's position is its assertion that DSCR lacks authority to approve products for inclusion on this QPL; it claims that only Kelly Air Force Base (Department of the Air Force), has this authority.² Phaostron concludes that AIC was not eligible for award.

Phaostron's argument is without merit. The applicable statute, 10 U.S.C. § 2319 (1998), is designed to encourage competition for products subject to qualification requirements by providing prospective offerors an enhanced opportunity to have their products qualified prior to the award of a contract in a given acquisition. To that end, the statute affords contracting officers the authority to find that a product meets (or will meet) a qualification requirement by the time of contract award,

¹ In its comments responding to the agency report, Phaostron challenged its and AIC's ratings under the agency's automated best value model (a system that essentially generates a numeric rating for a firm's past performance). The agency submitted a detailed response to the protester's assertion, and the protester made no mention of the issue in its subsequent submission to our Office. We therefore deem the issue abandoned. *Packaging Strategies, Inc.*, B-280814, Nov. 25, 1998, 98-2 CPD ¶ 120 at 5 n.2.

² We point out that Phaostron does not object to the approval of AIC's part from a substantive standpoint. It does not allege, for example, that there was a deficiency in the test data submitted by AIC for purposes of demonstrating its compliance with the qualification requirement. There also is nothing in the record to suggest that the part did not satisfy all qualification requirements.

regardless of whether the item is listed on the QPL. 10 U.S.C. § 2319(c)(3); Federal Acquisition Regulation §§ 9.202(c), 9.206-1(c). Nothing in the statute limits the contracting officer's authority to approve a product for a procurement based on whether the product has been tested or approved by a particular entity. Indeed, consistent with the statutory objective of enhancing competition for products subject to a qualification requirement, we have approved an agency's use of an alternate method of source approval--a licensing agreement with the original equipment manufacturer--in lieu of approval by an authorized agency activity. B.F. Goodrich Aerospace, B-261561 et al., Sept. 18, 1995, 95-2 CPD ¶ 137 at 4.

The contracting officer's actions here were consistent with the statute. As discussed, because the AIC part was not listed on the QPL at the time quotations were submitted, the contracting officer consulted with the cognizant quality assurance personnel at both DSCR and DSCC to determine whether AIC had in fact met all applicable requirements for purposes of being added to the QPL. The applicable personnel advised the contracting officer that AIC had in fact passed all necessary requirements relating to having its part added to the QPL; that the DSCR QPL panel had met and agreed that AIC had met all requirements, Memorandum from the Chief, Standardization Program Branch, DSCR (Aug. 13, 1996); and that, basically, the firm's part had not been added to the QPL due to an administrative oversight on the part of DSCC, the activity responsible for having this QPL periodically printed. Contracting Officer's Statement at 8. Based on the information provided, the contracting officer determined that AIC's part was qualified, and awarded the purchase order based on that conclusion. Whether or not DSCR has final approval authority for the QPL, there is no basis for questioning this determination;³ again, under 10 U.S.C. § 2319, the propriety of a contracting officer's actions in this area are not dependent upon whether a product has been approved by a particular agency entity.⁴

³ The record actually supports the agency's position that DSCR has the authority to grant source approval for the item in question. In this regard, the Department of the Air Force previously was responsible for maintaining the QPL, but in 1995 it transferred preparing activity responsibility for the QPL to DLA. Letter from the Chief, Engineering, Design, Drafting/Standardization Section, San Antonio Air Logistics Center, to the Commander, Defense General Supply Center (Dec. 12, 1995). While under the terms of this letter the Air Force retained engineering and technical responsibility for the documents, id., DLA explains (and the Air Force concurs) that this entails only providing technical support for the QPL and its associated specification; authority to approve a manufacturer's part for inclusion on the QPL is vested in the preparing activity, here, DSCR. Memorandum from Bill Lee, Defense Logistics Agency (Mar. 21, 2000).

⁴ Phaoston contends that it suffered competitive prejudice because it did not know that AIC was competing--its pricing strategy was based on the assumption that the competition would be limited to the one other firm listed on the QPL. This is not a
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Phaostron cites our decision in 43 Comp. Gen. 839 (1964) for the proposition that only the contracting activity designated as having authority to do so may properly add a product to a QPL. Even if Phaostron's interpretation of the decision is correct (we do not reach this question), it has no bearing on the protest here. As discussed, the contracting officer's actions are governed by 10 U.S.C. § 2319, which was promulgated in 1984, that is, subsequent to our 1964 decision. We have already concluded that the agency's actions here were proper under that statute.

The protest is denied.

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valid basis of protest. Not only did the solicitation specifically provide that qualification was only required by the time of award, RFQ at 3, but, as discussed, 10 U.S.C. § 2319 provides that a product may be approved by the contracting officer even where it is not included on the applicable QPL. Thus, Phaostron and other firms were on notice that firms not listed on the QPL could compete for the requirement.